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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/112,276	07/09/1998	TSE HO KEUNG		6721

7590 02/14/2003

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EXAMINER

BARRON JR, GILBERTO

ART UNIT	PAPER NUMBER
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2132

39

DATE MAILED: 02/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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Paper No. 39

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AIR MAIL

FEB 14 2003

In re Application of: Ho Keung Tse)	DECISION ON PETITION
Application No. 09/112,276)	UNDER 37 CFR § 1.181 TO
Filed: July 9, 1998)	INVOKE SUPERVISORY
For: PROTECTION OF SOFTWARE)	AUTHORITY
AGAINST UNAUTHORIZED USE)	

This communication is in response to the letter, filed by facsimile transmission January 17, 2003, entitled "Complaint Against Examiner Mr. Gilberto Barron, Jr." which is being treated as a Petition under 37 CFR §1.181 to invoke Supervisory Authority.

A review of the record indicates that Mr. Barron's actions were proper and in conformance with Office policy and practice.

DECISION

I. Adequacy of the Rejection

The basis of the complaint amounts to Petitioner taking issue with the sufficiency and adequacy of the rejection.

Whether the Examiner has established a prima facie case of obviousness and whether the rejections over art are correct are appealable issues not subject to petition. 37 CFR §§ 1.181(a) states:

§ 1.181 Petition to the Commissioner.

(a) Petition may be taken to the Commissioner: (1) From any action or requirement of any examiner in the ex parte prosecution of an application *which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court*; (2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Commissioner; and (3) To invoke the supervisory authority of the Commissioner in appropriate circumstances. For petitions in interferences, see § 1.644. (*Emphasis added*)


Thus, the correctness of the art rejection is not subject to review by Petition. In any event, Petitioner's argument reveal a total lack of understanding as to what constitutes prior art.

II. Allegation of Unfair Treatment

The final paragraph of applicant's complaint indicates a belief that the USPTO is discriminating against applicant because he is a foreign applicant. A review of the patent grant statistics shows that foreign applicants received over 45% of all patents granted in each year since 1996 measured either by date of patent grant or date of application. In fact, 50% of all patents granted on applications filed in 2001 were granted to foreign applicants. Accordingly, the allegation is without merit.

A review of the record indicates that Mr. Barron's actions were proper and in conformance with Office policy and practice. Therefore, no Supervisory action is warranted as a result of this review.

An Appeal Brief was filed on January 23, 2003. The application will be forwarded to the Examiner for appropriate action.


Margaret A. Focarino, Director
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